STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING PROCEEDINGS

FINDINGS & RECOMMENDATIONS

AS ISSUED

GREGORY JAMES VAN PELT

April 16, 2009

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STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

City of Tiffin *(Employer)* *-and-* **Ohio Police Benevolent Association** *(Union)*	)	SERB Case Nos.: 08-MED-09-0943/944/1056

APPEARANCES:

On Behalf of the Employer:

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On Behalf of the Union:

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SUBMISSION

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in two-year Agreements that became effective on January 1, 2007 and obtained through December 31, 2008. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Fact-finder in the matter on December 10, 2008. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on three occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Fact-finder hold an evidentiary hearing. Accordingly, a hearing was held on February 27, 2009, at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed on that date.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. Sick Leave	**Article 13 (Patrol, Promoted), Article 15 (Dispatch)**
2. Vacation	**Article 15 (Patrol, Promoted), Article 17 (Dispatch)**
3. Wages	**Article 24 (Patrol, Promoted), Article 23 (Dispatch)**
4. Duration	**Article 35 (Patrol, Promoted), Article 30 (Dispatch)**
5. Fitness for Duty	**Article 34 (Patrol, Promoted)**
6. Promotions	**New Contract Provision (Patrol, Promoted)**
7. Longevity	**Article 24 (Dispatch)**
8. Health Care	

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Fact-finder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

4117-9-05(K)(1) Past Collectively bargained agreements, if any, between the parties;

4117-9-05(K)(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

4117-9-05(K)(3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4117-9-05(K)(4) The lawful authority of the public employer;

4117-9-05(K)(5) Any stipulations of the parties;

4117-9-05(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND AND STATUTORY CONSIDERATIONS

The City of Tiffin (City or Employer) is a charter city of some 18,000 people located in the northwestern region of Ohio and is the county seat of Seneca County. The approximately twenty Patrolmen and eight Sergeants and Lieutenants employed by the City's Police Department are represented by the Ohio Patrolmen's Benevolent Association, (OPBA or Union) who relate with the Employer under the terms of a collective Agreement (Agreement) that took effect on January 1, 2007 and obtained through December 31, 2008. The OPBA also represents the City's six Police Communications Technicians (Dispatchers) in a separate bargaining unit, under a collective Agreement that also became effective on

January 1st of 2007 and expired on December 31st of 2008.

The City has two other employee bargaining units: the Maintenance and Service Department employees, organized as Local 583 of AFSCME Ohio Council 8 (AFSCME or Maintenance); and the Firefighters, represented by the International Association of Fire Fighters (IAFF or Firefighters). The collective bargaining agreements for both units expired on December 31, 2008.

As in other communities within Ohio and across the country, Tiffin's major employers have experienced significant declines in activity, particularly exacerbated by reductions in the automobile and housing construction sectors to which many were tied. American Standard Americas, maker of kitchen and bathroom fixtures and formerly the City's largest employer closed its operations in Tiffin after more than a century, resulting in the reported loss of more than a hundred jobs. National Machinery Corporation and Webster Manufacturing have both reduced production, resulting in a layoffs and a reduction in hours worked of some 25% each. Toledo Mold and Die, Taiho and American Fine Sinter – all suppliers to the automotive industry – are likewise experiencing layoffs and reductions in hours. The City's Mercy Hospital, also formerly a major employer, has restructured its operations resulting in the elimination of a number of jobs.

The decline in business activity in both Tiffin and the surrounding area in which the City's residents are employed has resulted in the loss of substantial income tax and other revenues. In 2006, the City's General Fund revenues – exclusive of grants deposited therein until spent on the projects for which they were intended – were some $10,129,661. That amount increased by 4.25% in 2007, to $10,560, 209, but declined in 2008 by somewhat less than 1% to $10,463,185. In the same three-year period, General Fund expenses increased in 2007 by 3.6% over 2006 expenditures, to $8,816,952 from 2006's $8,504,038; those 2007 expenditures increased another 5.5% in 2008, to $9,304,120.

The City's General Fund balance was reflective of both the 2007 revenue increases and the declines in revenue and increased expenses in 2008. In 2006, Tiffin carried over a balance of $835,312. That amount increased by 19% in January of 2007, to $997,175, but the City's unencumbered balance decreased by over 54% to $451,175 at the end of 2008.

Tiffin has projected General Fund revenues of $11,697,685 for 2009, as against budgeted General Fund expenses of some $12,117,901. Including the 2008 unencumbered

carryover of $1,721,195, but less an encumbered amount of $1,270 the City projected a 2009 year-end balance of $30,958 in its General Fund. However, January 2009 income tax revenues were down some $110,776 over January of 2008. Applying the 7.8% January decrease on its annual revenues for 2009, the City calculates a potential decrease in tax revenues of some $562,288 over 2008. Moreover, as Ohio experiences similar revenue declines, Local Government Funds allocated to Tiffin are projected to decrease by some $43,016.

Thus, while Tiffin is not completely without the ability to pay wage and other monetary increases sought by the OPBA, it is clear that the economic impact of doing so would present an economic hardship, if not a financial disaster to the City. The Union's proposals for wage, benefit and shift differential increases would total almost $85,000 in 2009; $15,233 in 2010; and another $58,064 in 2011, if the Union's proposal for a three year Agreement is recommended.

To deal with what it characterizes as the "financial crisis", the City has undertaken a number of cost containment and income redistribution measures. Among these, the Employer has allocated certain enterprise funds to pay 35% of the salaries of the Mayor, Finance Department, City Administrator and other administrative personnel. In addition, it has left vacant a number positions, including, notably, one Dispatcher, one Police Officer, two Firemen and one Street Department employee. There is no question that these reductions in critical safety and maintenance personnel adversely impact the safety and welfare of Tiffin's residents.

In addition to reduction in the number of employees through attrition, Tiffin has imposed a wage freeze on non-represented employees, in exchange for absorbing a 6% increase in health insurance premiums. The Mayor and other City officials who received salary increases of some $1,000 by City ordinance have spend much of the increases – and possibly more – in assuming supply, office and other expenses previously paid from General Funds.

Consistent with the above measures, the Employer negotiated two-year agreements with both its AFSCME and IAFF bargaining units providing for no wage increase in 2009 and a reopener provision to negotiate 2010 wages. These conditions were exchanged for the City's agreement to assume the 6% health insurance premium increases, as were provided

non-represented City employees. However, both contracts contain "me-too" provisions, guaranteeing AFSCME and IAFF members any compensation increases accorded the City's Police Officers and Communications Technicians.[1]

The OPBA presents a number of communities it asserts are comparable to Tiffin and within the area labor market. Examination of the data for these peer communities indicates that the top wages for City Patrol Officers are well within the average of the communities submitted; as are those of promoted Officers. Tiffin's Dispatchers, while not the region's lowest paid, are somewhat below those of the comparable communities presented.

The Tiffin Police Department recently became certified by the Commission on Accreditation for Law Enforcement Agencies (CALEA). When compared to Ohio CALEA certified departments, the City's Patrol Officers, with a top pay of $23.55 per hour, is below the CALEA average of $28.41. Communications Technicians, with an average hourly wage of $15.96 per hour are likewise well below the CALEA average of $21.36.

However, no evidence was presented to indicate an inability on the part of the City to attract and retain qualified Police Officers or Dispatchers.

In consideration of the above statutory factors, as well as those discussed below, the following findings and recommendations are respectfully submitted.

FINDINGS AND RECOMMENDATIONS

Article 13 (Patrol, Promoted), Article 15 (Dispatch)
Sick Leave

OPBA Proposal:

The Union proposes an increase in sick leave accumulation from the current rate of ten hours for each month of completed service to twelve and one-half hours; and accrual of a maximum of 1,440 hours of sick leave, with any hours in excess of that amount to be paid to employees at their current pay rate on December 1 of each year.

The OPBA argues that all City employees with the exception of members of the

[1] In most cases, this Fact Finder views such me-too language as having little or no weight with regard to issues at impasse between Parties in fact-finding proceedings. In the present case, the Employer's negotiations with its other bargaining units are not within the purview of the undersigned, and are considered here only to the extent such agreements reflect internal parity, not whether their terms are determinative with regard to these proceedings.

Police Department work eight hour days and receive 1 ¼ day of sick leave per month. Working 24 hour shifts, Fire Department employees receive 30 hours of sick leave per month – also 1 ¼ days. Members of the present bargaining units work 10 hour shifts, but only accrue sick leave at the rate of ten hours – or one day – per month. Accordingly, the Union argues that internal parity is served by its proposals.

In support of its proposal, the Union argues that a number of comparable jurisdictions enjoy a greater benefit.

Employer's Position:

The City argues that it presently provides a reasonable sick leave benefit to OPBA members, consistent with that provided other represented City employees. Additionally, it maintains that the increased sick leave would result in additional overtime costs. Under the Employer's proposal, sick leave would be a subject addressed in reopened negotiations in November of 2009. Accordingly, the City urges that current contract language be retained.

Findings and Recommendations:

As noted above, the City's argument that 'me-too" language contained in its agreements with its AFSCME and IAFF bargaining units should preclude recommendation of the OPBA's proposal in these negotiations is, of itself, unpersuasive.

However, neither does the Union's argument that bargaining unit members receive a lesser benefit than other City employees militate for acceptance of its proposed change. While it is true that employees working eight hour days accrue 1 ¼ days of sick leave entitlement per month, while OPBA members receive only one 10-hour day per month, both receive ten hours for every 160 hours worked. Moreover, examination of the comparable jurisdictions presented by the Union indicates most are equal to, or even below, the ten hours per month currently provided members of the instant bargaining units. Finally, the additional costs of such an increase are presently beyond the reasonable ability of the City to sustain.

Therefore, no change in the present provision can be recommended.

Article 15 (Patrol, Promoted), Article 17 (Dispatch)
Vacation

OPBA Proposal:

The Union proposes revision of the vacation accrual schedules for all bargaining units

as follows:

Years Completed Service	*Hours of Vacation Per Year*
One through four	*80*
Five ***through Nine***	~~*88*~~ ***120***
~~*Six*~~	~~*96*~~
~~*Seven*~~	~~*104*~~
~~*Eight*~~	~~*112*~~
~~*Nine through Twelve*~~	~~*120*~~
~~*Thirteen*~~	~~*128*~~
Ten through *Fourteen*	~~*136*~~ ***140***
Fifteen ***through Nineteen***	~~*144*~~ ***160***
~~*Sixteen*~~	~~*152*~~
~~*Seventeen*~~	~~*160*~~
Over Twenty	~~*168*~~ ***200***

The OPBA points out that the vacation accrual schedule for bargaining unit members has remained unchanged since 1977. Consequently, the Union urges the proposed modifications in order to provide OPBA members with incentive to remain with the Department over a long term.

The requested increase is warranted by benefits enjoyed by other area jurisdictions, many of whom receive increases in vacation entitlements after fewer years of service. Based on the above rationale, the Union urges the Fact Finder to recommend the proposal.

Employer's Position:

The City argues that increases in vacation benefits to members of this bargaining unit would be fiscally irresponsible and would trigger me-too provisions in other collective agreements. Moreover, increased vacation entitlements would require that open duty hours be covered at overtime rates. As the subject of vacation benefits would be addressed in the reopened negotiations in November of this year, the City urges that current contract language be retained.

Findings and Recommendations:

While the OPBA's desire for revision of a decades-old vacation accrual schedule is certainly understandable, and in other times not unreasonable, the City's current economic circumstances militate against any increases at present. Further, the evidence indicates that most if not all other City employees are provided equal vacation benefits. Neither is the rate of vacation accrual of Tiffin Police Department employees substantially out of line with that

of other jurisdictions presented.

Therefore, the retention of current contract language is recommended at this time.

Article 24 (Patrol, Promoted), Article 23 (Dispatch)

Wages

Employer's Proposal:

The City proposes a freeze in wages for 2009, with a re-opening of negotiations with regard to wages and benefits in the second contract year to commence on November 15, 2009.

In support of its argument that its dire financial position requires minimal or no increased expenditures, the City points to OAC §4117-9-05(K)(3), requiring fact finders to consider "the ability of the employer to finance and administer the issues proposed . . . ". The Employer maintains that it simply does not have the financial ability to pay the wage and benefit increases sought by the OPBA, which it again points out would trigger me-too clauses in the contracts of its other bargaining units. Moreover, the Employer warns that increases in wage costs might require layoff of police personnel, thus negatively impacting the public welfare.

Wage freezes in the current year, with a re-opening of negotiations in November to bargain second-year wage and benefit issues, have already been accepted by the City's AFSCME and IAFF units. Internal parity thus recommends that the OPBA units be subject to the same terms.

The Employer rejects the Union's reliance on wages paid police department employees in comparable communities. Given Tiffin's bleak economic position, such comparisons are simply not meaningful, according to the City. Even if such comparisons are deemed meaningful, no other community adequately compares to the Tiffin.

The City also rejects the OPBA's proposal for a 12% differential between Sergeants and Patrol Officers; and an equal differential between Lieutenants and Sergeants. Were such differential implemented, the salary of all three current Lieutenants would exceed that of the Department's Captain.

The City argues that both wages and rank differential would be subject to negotiations under the proposed re-opener.

OPBA Proposal:

The Union proposes across-the-board wage increases for all three bargaining units of 3.5% in each year of a proposed three-year contract. It further proposes that the differential in pay between Patrol Officers and Sergeants be 12%, and that the differential between Sergeants and Lieutenants be 15%.

The OPBA recognizes that the increase it proposes is exceeds the state average. However, it argues that the increase is warranted because the Tiffin Police Department recently became a CALEA certified. Under CALEA certification, bargaining unit members held to "a higher standard of performance, professionalism, and expectation, and should be compensated accordingly".

Additionally, the Union argues that the wages of Tiffin Police and Dispatch employees remain well below the average of other CALEA certified departments. Accordingly, the increase sought by the Union is necessary for the City to remain competitive with other units.

Therefore, the OPBA urges the Fact Finder to recommend its proposed increases in both base wage rates and rank differential.

Findings and Recommendations:

The recessionary times in which we find ourselves as a state and a nation are unfortunate realities. The City of Tiffin has been acutely affected by the present economic downturn. In such circumstances, wage and benefit increases negotiated and implemented by other jurisdictions in better times have little relevance and are unpersuasive.

The City's declining financial position has not yet reached a calamitous level, yet neither is it in a position to undertake the increases in wages and rank differential proposed by the OPBA here.

And while the CALEA certification presented by the Union is commendable, evidence indicates that the requirements and standards have more to do with documentation than with extraordinary performance expectations. Nor is there compelling evidence that the

City's Police Department is unable to attract and retain qualified Officers, Supervisors or Dispatchers.

Under most circumstances, this Fact Finder is loath to recommend a re-opening of negotiations within a short period, or, for that matter as discussed below, a contract of fewer than three years in duration; negotiations are an expensive, resource-demanding undertaking for both Parties. However, a wage freeze in the current year is justified by the Employer's current fiscal position, and is consistent with the contract provisions agreed upon by the City's other represented units, as well as the terms provided non-represented employees.

Accordingly, and reluctantly, the Fact Finder recommends the City's proposal for no wage increases in 2009, with a re-opening of negotiations in November of this year on the subjects of wages and benefits in the second year of a two-year Agreement, on the understanding that the City will assume increases in the cost of health insurance premiums as discussed below.

Article 35 (Patrol, Promoted), Article 30 (Dispatch)

Duration

Employer's Proposal:

The City proposes that a successor Agreement take effect retroactively to January 1, 2009, and remain in effect for two years, subject to a wage and benefit re-opening of negotiations in November of 2009.

OPBA Position:

The OPBA proposes a three year Agreement, arguing that such a duration provides bargaining unit members with some security in tenuous economic times. The OPBA also argues that renegotiating collect agreements require substantial expenditures on the part of the Union.

Findings and Recommendations:

As the OPBA contends, and as discussed briefly above, collective bargaining, even of successor agreements, is a resource-intensive process. It is largely for this reason that most contracts in the public sector endure for three years.

However, given the present financial uncertainties faced by the City here, and the resultant need to limit benefit increases recommended for bargaining unit members, it benefits both Parties to re-assess their respective positions sooner, rather than imposing on

them terms that might be inapplicable in the near future.

Accordingly, the two year Agreement proposed by the City is recommended.

Article 34 (Patrol, Promoted)

Fitness for Duty

Employer's Proposal:

While it concedes that administration of the current Fitness for Duty test has had some difficulties in the past, the City argues that the present testing process is workable, and ensures that Police Officers are physically capable of protecting the safety and welfare of Tiffin residents, as well as supporting their fellow Police Officers.

In fact, the City asserts that the test is not rigorous, and that no employee hired after December 31, 2001 and to whom disciplinary action could apply has failed the test.

OPBA Proposal:

The Union contends that the fitness-for-duty examination has not been followed as written since the inception of the program in 2001. As it maintains that the City has failed to administer the test in accordance with the Agreement, the Union urges revision of the date permitting disciplinary action against those Officers failing to successfully complete the test. At present, the OPBA contends, all employees hired before the test was instituted are exempted from discipline. Accordingly, the Union requests that all employees hired before January 1, 2009 be exempt from discipline.

Findings and Recommendations:

In theory, testing a safety employee's fitness to perform the tasks of his or her position is a reasonable exercise of a public employer's responsibility to assure the welfare of its residents. However, a two-tiered system, in which some employees are subject to disciplinary action and some are not would seem injurious to Department morale.

Absent discussion and mutual consent on the part of the Parties regarding revisions to the testing procedure and disciplinary action for failure of the test, modification of Article 34, Section 3 as proposed by the OPBA is recommended:

> *Section 3. Employees hired prior to ~~December 31, 2001~~* ***January 1, 2009*** *must participate in all aspects of the fitness-for-duty test except as provided in Sections 7-10 below. However, no discipline shall be issued for failure to successfully complete the test.*

New Contract Provision (Patrol, Promoted)

Promotions

OPBA Proposal:

The Union proposes new contract language in the collective Agreements of the Patrol and Sergeants and Lieutenants bargaining units; that language would provide that promotions be made pursuant to ORC §124.44.

ORC §124.44 provides for a process the Union describes as "a fair and equal opportunity for individuals to gain advancements through the promotional process."

The City's present promotional process is prescribed by City Ordinance. Consequently, the Union argues that it affords the City Administrator substantial discretion in promoting qualified candidates to the rank of Sergeant, Lieutenant, and Captain. By contrast, the OPBA argues that its proposal provides that promotions will be carried out fairly in accordance with the Revised Code, free from what the OPBA argues is bias and personal preference in the promotional process.

City Position:

As a Charter City, the Employer argues that the City Council enjoys the exclusive right to mandate, through City Ordinances, the procedures to be used in promotions within its safety forces. The Employer therefore rejects the Union's proposal as intrusive on its powers of home rule under the Ohio Constitution.

Findings and Recommendations:

While the Union's contention that the present promotion process is subject to bias and personal preference is true, it is also true that the City has home rule powers to set forth any process it deems reasonable, subject only to statutory or constitutional restraints. ORC §124.44 provides no such constraints, but rather supplies a promotions procedure for non-charter jurisdictions which may be adopted by Charter Cities and Counties.

Moreover, while it is possible that bias and personal preference may enter the process, the rights of individual bargaining unit members who may suffer damage thereby are protected by Civil Service Commission oversight and right of appeal.

Accordingly, the Union's proposal is not recommended.

Article 24 (Dispatch)

Longevity

OPBA Proposal:

The Union proposes an additional Step to the longevity schedule at Article 24 of the Communications Technician's Agreement. Under the OPBA's proposal, the following would be added to the schedule:

6. After twenty-five (25) years 12%

The Union argues that bargaining unit members participate in PERS, allowing a participant to retire after thirty years of service as opposed to the twenty year retirement option available to Police Officers. Currently, Communications Technicians receive no longevity beyond the ten percent after twenty years of service, despite that bargaining unit members must work thirty years prior to being eligible for retirement.

The additional step proposed by the Union, it says "breaks up the final ten years of service, and provides the employee with one final small increase for their many years of service." Moreover, the Union asserts that the proposed increase in longevity will provide an incentive to keep current employees as well as to attract qualified prospective employees.

City Position:

The Employer asserts that the present policy is costly to the City, and that further increases would be "financially unsound". In fact, according to the Employer, under the proposed language one Communications Technician would be eligible for additional longevity pay in May of the present year; another would become eligible in 2014; and yet a third Dispatcher would receive the entitlement in 2017. Additionally, an increase in the longevity benefit to Communications Technicians would trigger commensurate modifications to the Fire and AFSCME agreements, under the me-too provisions of those contracts. As a result, three Firefighters and one Maintenance employee would become eligible for increased longevity.

Finally, the Employer argues that the subject of longevity pay is susceptible to negotiation under the City's proposed re-opener proposals.

Findings and Recommendations:

As noted above, the fact-finding process in the present matter cannot and should not be controlled by terms and conditions agreed upon by other bargaining units in extrinsic

negotiations in which the Union here has had no part, nor over which the Fact Finder had authority. Each labor agreement must be effected on its own terms and on the basis of its own unique facts. That the City agreed to language that requires that it make concessions to other bargaining units cannot be used as a lever with which to control negotiations here.

Here, the differing service requirements for retirement eligibility for personnel under the Public Employees Retirement System, and those Officers covered by Ohio Police and Fire Pension Fund creates just such a factual distinction, and the OPBA's rationale for its proposal is persuasive, notwithstanding the City's argument that it has had no difficulty attracting and retaining Communications Technicians under the current longevity schedule.

While it is regrettable that a determination that a benefit to one bargaining unit is warranted affects members of other units, that is the bargain the City chose to make in those negotiations. The OPBA's proposal is recommended.

Health Care

City Proposal:

The Employer proposes to continue to assume a 6% increase in health insurance premium costs through 2009, in consideration of the wage freeze recommended herein.

OPBA Position:

Having opposed the wage freeze in favor of its own proposed 3.5% annual wage increases, the OPBA rejected the City's proposal.

Findings and Recommendations:

As the Fact Finder recommended the City's proposed 2009 wage freeze and 2010 re-opener, he now accordingly recommends that the City assume the 6% premium increases, as it proposed.

SUMMARY OF RECOMMENDATIONS

1. **Sick Leave** **Article 13 (Patrol, Promoted), Article 15 (Dispatch)**
   Current contract language recommended retained.

2. **Vacation** **Article 15 (Patrol, Promoted), Article 17 (Dispatch)**
   Current contract language recommended retained.

3. **Wages** **Article 24 (Patrol, Promoted), Article 23 (Dispatch)**
   Wage freeze 2009; re-opening of wage and benefit negotiations November 15, 2009

4. **Duration** **Article 35 (Patrol, Promoted), Article 30 (Dispatch)**
   Two year Agreement recommended

5. **Fitness for Duty** **Article 34 (Patrol, Promoted)**
   OPBA proposed modification to Section 4 recommended.

6. **Promotions** **New Contract Provision (Patrol, Promoted)**
   Current contract language recommended retained

7. **Longevity** **Article 24 (Dispatch)**
   OPBA proposed Step addition recommended.

8. **Health Care**
   City to assume health care premium increase through 2009

Any and all mutually accepted tentative agreements.

Gregory James Van Pelt

Respectfully submitted this 16th day of April, 2009
At Shaker Heights, Cuyahoga County, Ohio